STATE OF MICHIGAN

IN THE SUPREME COURT

CYNTHIA HARDY, Personal Representative of the Estate of MARGARET MARIE ROUSH,
Plaintiff-Appellee,

v

SC: 150882
COA: 317406
Montcalm CC: 2012-016830-CZ

LAURELS OF CARSON CITY, L.L.C.,
Defendant-Appellant.
_____/

BRIEF OF *AMICUS CURIAE* STATE BAR OF MICHIGAN'S ELDER LAW AND DISABILITY RIGHTS SECTION IN SUPPORT OF APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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ELDER LAW AND DISABILITY RIGHTS SECTION'S PUBLIC POLICY POSITION

ELDER LAW & DISABILITY RIGHTS SECTION
Respectfully submits the following position on:

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AMICUS BRIEF In Re APPLICATION FOR LEAVE TO APPEAL FOR THE ESTATE OF MARGARET MARIE ROUSH v. LAURELS OF CARSON CITY, L.L.C.; SC 150882

*

The Elder Law & Disability Rights Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed herein is that of the Elder Law & Disability Rights Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Elder Law & Disability Rights Section is 1,163.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision making body is 25. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0. The number who abstained from voting was 0.

INDEX OF AUTHORITIES

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JURISDICTIONAL STATEMENT

The State Bar of Michigan's Elder Law and Disability Rights Section (the "Elder Law Section") relies on the jurisdictional statement provided by Appellants, as well as MCR 7.301(A)(2), MCR 7.302(B)(3), and MCR 7.302(B)(5). The Elder Law Section further states that this amicus curiae brief is being filed pursuant to this Honorable Court's September 18, 2015 order inviting the Elder Law Section to file. The Elder Law Section strongly believes that the issues raised in the application warrants this Honorable Court's attention.

JUDGMENT BEING APPEALED AND RELIEF SOUGHT

The instant application for leave to appeal arises out of Appellee's circuit court complaint against Appellant alleging false imprisonment, intentional infliction of emotional distress, abuse of process, and civil conspiracy in connection with her stay at Appellant's facility from October 17 to November 21, 2012. On June 25, 2013, Montcalm Circuit Court's granted summary disposition to the defendant pursuant to MCR 2.116(C)(10) and dismissed all of plaintiff's claims. On December 11, 2014, the Court of Appeals (1) vacated an Order of the Montcalm County Circuit Court dated July 10, 2013, which had granted Defendant's Motion for Summary Disposition; and (2) reinstated all the causes of actions alleged in the Complaint, including those which Appellant claims had been abandoned by Plaintiff by failing to address the validity of those claims in her Appellant Brief filed with the Court of Appeals

The State Bar of Michigan's Elder Law and Disability Rights Section believes that the ruling of the Court of Appeals should be overruled because it is contrary to the statutory provisions of the Estates and Protected Individuals Code. Therefore, the Elder Law and Disability Rights Section respectfully requests that this Honorable Court to reverse the Court of Appeals finding that Ms. Roush's ability or lack thereof to participate in medical treatment decisions is a fact which can be decided by the circuit court separately from and outside of the procedures provided in EPIC for the resolution of such disputes, and hold that the determination made in 2012 according to Michigan's PAD Act that Ms. Roush's was not able to participate in medical treatment decisions cannot now be litigated in the circuit court, or in the alternative, to grant leave to appeal to Appellants.

AMICUS CURIAE'S STATEMENT OF QUESTIONS PRESENTED

I. WHETHER THE STATUTORY PROVISIONS OF THE ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC) WHICH OUTLINE THE PROCEDURE FOR CREATING AND UTILIZING PATIENT ADVOCATE DESIGNATIONS, IS THE PROCEDURE THAT MUST BE FOLLOWED WHEN DEALING WITH SUCH MATTERS?

Appellants Answer: Yes

Circuit Court Answer: Yes

Court of Appeals Answer: No

Appellees Answer: No

Amicus Curiae Answer: Yes.

II. WHETHER A CIRCUIT COURT, IN AN ACTION FILED OUTSIDE THE PROCEDURES SET FORTH IN MICHIGAN'S PAD ACT, CAN IGNORE THE PROVISIONS AND REQUIREMENTS OF MICHIGAN'S PAD ACT, AND MAKE ITS OWN DETERMINATION OF "WHETHER THE PATIENT IS UNABLE TO PARTICIPATE IN MEDICAL TREATMENT DECISIONS," INDEPENDENTLY AND WITHOUT REGARD TO THE PROCEDURES PROVIDED IN MICHIGAN'S PAD ACT.

Appellants Answer: No

Circuit Court Answer: Not addressed, but impliedly answered No

Court of Appeals Answer: Yes

Appellees Answer: Yes

Amicus Curiae Answer: No.

III. WHETHER THE CIRCUIT COURT HAS GENERAL JURISDICTION OVER THE DESIGNATION, ACCEPTANCE, ACTIVATION, AUTHORITY, ACTIONS, SUSPENSION, OR REVOCATION OF A PATIENT ADVOCATE, OR DISPUTES RELATED THERETO?

Appellants Answer: Not addressed

Circuit Court Answer: Not addressed

Court of Appeals Answer: Not addressed

Appellees Answer: Not addressed

Amicus Curiae Answer: No.

STATEMENT OF FACTS

Margaret Roush executed a patient advocate designation on June 10, 2010. (*See* Exhibit 1 attached to Appellee's Supplemental Brief). Robert Gallagher's signature accepting the patient advocate designation is dated 9-10-10. That patient's advocate designation designated Robert Gallagher (not a relative, but apparently a long time family friend) as her patient advocate. That patient advocate designation did not name an alternate patient advocate, although Cynthia Hardy (Margaret Roush's granddaughter) signed an acceptance as successor to the patient advocate by apparently on September 10, 2010. *Id.* That patient advocate designation includes the following statement:

> I designate Robert Gallagher . . . . as my patient advocate to make care, custody, medical or mental health treatment decisions for me only when I become unable to participate in medical treatment decisions. **The determination of when I am unable to participate in medical and/or mental health treatment decisions shall be made by my attending physician and another physician or licensed psychologist.**
> [emphasis added] (*See* Exhibit 1 attached to Appellee's Supplemental Brief)

Ms. Roush had been admitted to the Appellant Laurels of Carson City, LLC's facility on three separate occasions and was ultimately readmitted to the nursing home on October 16, 2012. *See* Application for Leave to Appeal on Behalf of Defendant-Appellant the Laurels of Carson City, LLC ("Application for Leave") p 2.

On (or about) October 24, 2012, the PAD was "activated" through the statutory procedure. *Id.* On October 22, 2012, Dr. Robert Seals (Ms. Roush's treating physician) signed a form stating that he deemed this resident incapacitated to make and communicate medical/financial decisions due to dementia. *See* Exhibits B & C of Appellant's Application for Leave to Appeal. Apparently on

October 23, 2012 (this date is sometimes referred to as October 24, 2012), Dr. Srinivasa Madireddy signed the reverse side of the form stating that this doctor had assessed the resident for decision making capacity and agreed with the findings of the first physician. According to Appellee, within two weeks, Ms. Roush began to demand to be discharged from Laurels so she could return home. *See* Appellee's Supplemental Brief, p 4. However, as part of the claims asserted in the current litigation, Appellee has asserted that Ms. Roush was actually able to participate in making medical decisions on October 24, 2012, and it appears that the Michigan Court of Appeals has relied on these assertions in making its decision:

> However, discovery was not closed at the time of the hearing on defendant's motion for summary disposition, and plaintiff provided the trial court with an affidavit alleging that if deposed, one of these physicians would testify that Roush actually was able to participate in making medical decisions on October 24, 2012. Further, at the time of the hearing on the motion for summary disposition plaintiff had not yet had the opportunity to analyze hundreds of pages of written discovery that could have shed light on Roush's mental capabilities on October 24, 2012. In sum, the issue whether Roush was unable to make decisions regarding medical treatment on October 24, 2012, was unresolved at the time summary disposition was granted, and this unresolved issue was material to plaintiff's false imprisonment claim.
>
> *See* Court of Appeals Opinion dated December 11, 2014, p 2

According to the Appellee, on November 1, 2012 (and apparently at other times during November) Ms. Roush demanded discharge from the Facility. *See* Response to Application for Leave to Appeal, p 2. According to Appellee, Ms. Roush also asserted that she had regained ability to make her own medical care decisions. *Id.* p 4, there does not seem to be any evidence of this in the case record itself. Also during November 2012, Ms. Roush granddaughter, Ms. Hardy, requested that Ms. Roush be discharged from the nursing home to her personal residence (which she shared with her mother and Ms. Roush). *See* Application for Leave, p 3. Ms. Roush was not discharged,

because Mr. Gallagher was the designated patient advocate and had not authorized the discharge. *Id.*

On November 15, 2012, the Appellee's attorney met with Ms. Roush at the nursing home, and after that meeting, he informed the nursing home staff that in his opinion Ms. Roush was fully competent to make her own decisions, that Ms. Roush had revoked the patient advocate designation, and further that Ms. Roush demanded that she be discharged home. *Id*. At that meeting, Ms. Roush signed a document which states that she is revoking "the designation of Robert Gallagher to act for me as my patient advocate" which the attorney delivered to the nursing home staff. *Id.* at p 4.

That revocation document also purported to designate Cynthia Hardy as the acting patient advocate. *Id.* However, as noted above, the original patient advocate document did not actually name Cynthia Hardy as the successor patient advocate, and the new document did not include the statutory wording and was not signed in the presence of two witnesses. *See* Supplemental Brief in Support of Application for Leave, p 6. The Appellant disputes "*whether Ms. Roush had the requisite mental capacity and intent required by MCL 700.5506 (1) to designate a new patient advocate*". *See* Application for Leave, p 4.

On November 15, 2012, the Appellee's attorney filed a petition for Habeas Corpus in circuit court. *Id.* at 4. The circuit court found that the probate court was a better forum to address the issue and denied the writ on November 16, 2012. *See* Order Denying Writ of Habeas Corpus, attached to Application for Leave as Exhibit D. Also on November 16, 2012, Mr. Gallagher filed a petition for Appointment of Guardianship of Ms. Roush, but no temporary guardian was appointed. *See* Application for Leave, p 4.

Ultimately, a hearing was held in probate court on November 21, 2012 at which time the

probate court declined to appoint a guardian, and allowed Ms. Roush to return home. No petition was filed, and no hearing was held, pursuant to the procedures outlined in Michigan's PAD Act for dealing with disputes pertaining to patient advocate designations.

On December 11, 2012, a complaint was filed in the circuit court on behalf of Ms. Roush claiming false imprisonment, intentional infliction of emotional distress, abuse of process, and civil conspiracy.

On March 7, 2013, Ms. Roush passed away.

On June 25, 2013, the circuit court granted the Appellant's motion for summary disposition on the basis that the procedure outlined in MCL 700.5508 was dispositive.

The Court of Appeals reversed, on the basis that questions of fact remained as to whether Ms. Roush was able to make her own medical care decisions during October 2012 (and following), and declined to interpret MCL 700.5508, because it ruled that MCL 700.5508 was not dispositive. As stated by the Court of Appeals:

> At the time the trial court granted Defendant's motion for summary disposition, genuine issues of material fact remained with regard to whether Gallagher was validly appointed as Ms. Roush's patient advocate on October 24, 2012, and whether he remained as her patient advocate thereafter. . . . In sum, the issue whether Roush was unable to make decisions regarding medical treatment on October 24, 2012, was unresolved at the time summary disposition was granted, and this unresolved issue was material to plaintiff's false imprisonment claim.
>
> *See* Court of Appeals Opinion dated December 11, 2014, p 2

The Court of Appeals Opinion also stated:

> Moreover, even if Gallagher's powers as a patient advocate were properly invoked on October 24, 2012, to provide a defense to the claim of false imprisonment, Gallagher's authority would have needed to extend through the period of alleged false imprisonment, i.e., would need to extend from November 8 to November 21, 2012. And, at the time of the hearing on the motion for summary disposition, there

were unresolved factual questions with regard to whether Gallagher's authority as a patient advocate extended through November 21, 2012. These unresolved issues include when or whether Gallagher's authority as a patient advocate was suspended pursuant to MCL 700.5509(2) based on Roush's regained ability to participate in medical decisions, and whether Roush validly revoked Gallagher's patient advocate designation on November 15, 2012, pursuant to MCL 700.5510(1)(d) and MCL 700.5507(7). All of these unresolved factual issues are material to the false imprisonment claim because the facility's ability to legally restrict Roush's freedom of movement based on directions from her patient advocate necessarily turns on whether and when Gallagher's authority as Roush's patient advocate was valid.

See Court of Appeals Opinion dated December 11, 2014, p 3

ARGUMENT

The Elder Law Section provides education, information, an analysis about issues of concern to our members through meetings, seminars, its web site, public service programs, and a newsletter. Membership in the Section is open to all members of the State Bar of Michigan.

The instant application for the Elder Law Section is of particular concern because it believes that the Court of Appeals decision erroneously interpreted the statutory provisions of the Estates and Protected Individuals Code.

The Elder Law Section believes that this Court should reverse the Court of Appeals. The Elder Law Section believes that Court of Appeals erred when it held that the circuit court can ignore the provisions and requirements of Michigan's PAD Act, and make its own determination of "whether the patient is unable to participate in medical treatment decisions," independently from the procedure provided for in Michigan's PAD Act, months or even years after the patient advocate has acted, as well as after the patient has revoked the PAD in question, and even after the patient's death. The Section further advocates that the circuit court does not have jurisdiction to address such matters pertaining to a patient advocate designation, including the creation, activation, and revocation of patient advocate designations, or disputes over whether the patient is able or unable to participate in medical or mental health treatment decisions. The result urged by the Elder Law Section is consistent with the plain language of MCL 700.5506 through 700.5520, the intent of the Legislature, and Michigan's statutory scheme related to patient advocate designations, including the Estate and Protected Individuals Code (EPIC).

I. THE STATUTORY PROVISIONS OF THE ESTATES AND PROTECTED INDIVIDUALS CODE (EPIC) WHICH OUTLINE THE PROCEDURE FOR CREATING AND UTILIZING PATIENT ADVOCATE DESIGNATIONS, IS THE PROCEDURE THAT MUST BE FOLLOWED WHEN DEALING WITH SUCH MATTERS.

The use of Michigan's Patient Advocate Designation (PAD) Act is voluntary. No one is required to sign a PAD. However, if you elect to sign a PAD, then you have in essence agreed to be bound by the PAD's procedure. If the Michigan legislature determines that additional options or protections are needed, then it is the Michigan legislature that will need to formalize and adopt those procedures.

A. Standard of Review

A holding that involves the application and interpretation of statutes and other questions of law is reviewed de novo. *In re MCI Telecommunications Complaint*, 460 Mich 396, 414; 596 NW2d 164 (1999); *Hoste v Shanty Creek Mgmt Inc*, 459 Mich 561, 569; 592 NW2d 360 (1999), *rehrg den*, 460 Mich 1201; 598 NW2d 336 (1999).

B. The Constitutionally Protected Liberty Interest in Refusing Unwanted Medical Treatment Is Not an Issue in this Case.

As stated by the United States Supreme Court in *Cruzan v Director, Missouri Dept of Health*, 497 US 261, 110 S Ct 2841 (1990):

> The principle that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions. *Cruzan* at 278.

However, the U.S. Supreme Court also noted:

> But determining that a person has a "liberty interest" under the Due Process Clause does not end the inquiry; "whether respondent's constitutional rights have been violated must be determined by balancing his liberty interests against the relevant state interests."
> *Cruzan* at 279.

When important medical decisions must be made, the patient is consulted and his or her preferences are generally followed. When a patient is incapacitated others must make the medical care decisions. Our Legislature has authorized adults "of sound mind" to sign two types of advance directives.

The Michigan Legislature enacted the Patient Advocate Designation (PAD) Act of 1990, as part of the Revised Probate Code, which was re-codified without amendment (at that time) as part of the Estates and Protected Individuals Code (EPIC), beginning at MCL 700.5506 et seq. The Patient Advocate Act, which is currently found in Part 5 of EPIC [1998 PA 386, MCL 700.1101 et seq], permits an adult "of sound mind" to designate a person (the "patient advocate") to make medical treatment decisions when the patient is unable to participate in such decisions. Under the statute, a PAD is a durable limited power of attorney in which a competent person over the age of 18 may address matters relating to the "patient's desires on care, custody, and medical treatment." MCL 700.5507(1).

The Michigan Do-Not-Resuscitate Procedure Act [MDNRPA], 1996 PA 193, MCL 333.1051 et seq, permits an adult "of sound mind" to sign a do-not-resuscitate (DNR) order under certain circumstances, and provides an exemption from criminal and civil liability for withholding medical treatment. The MDNRPA, includes specific requirements for signing, as well as witnessing. As with the PAD under the Patient Advocate Act, a DNR order signed under the MDNRPA can be revoked by the patient (declarant) at any time and in any manner by which he or she is able to

communicate an intent to revoke. Also as with the Patient Advocate Act, disputes are to be resolved by a petition to the probate court. See MCL 333.1059.

In addition, Michigan law also provides for the appointment of a guardian for a person when the stated statutory criteria has been shown to exist. The standard for appointing a guardian is different than the standard for when a PAD is activated. In a guardianship proceeding, the court may appoint a guardian for an incapacitated individual if it finds by clear and convincing evidence that the individual for whom a guardian is sought is incapacitated and that the appointment is necessary as a means of providing continuing care and supervision of the incapacitated individual. MCL 700.5306(1). The ward or a person interested in the ward's welfare may petition for an order removing the guardian, appointing a successor guardian, modifying the guardianship's terms, or terminating the guardianship. MCL 700.5310(2).

MCL 700.5314 addresses the powers of a guardian of an incapacitated person. Except as modified by court order, a guardian may give the consent necessary to enable the ward to receive medical or other professional treatment. MCL 700.5314(c). In *In re Martin*, 450 Mich 204; 538 NW2d 399 (1995), the Court noted that, with regard to the Patient Advocate Act, the Court will "express no opinion about how the act and its provisions should be interpreted because that question is not before us." *In re Martin*, footnote 11. The standards held in *Martin* do not apply in the context of this Case, since *Martin* was a guardianship case and the Martin court declined to interpret our Patient Advocate Act.

C. Ms. Roush's Patient Advocate Designation Was Properly Activated on (or about) October 24, 2012

In spite of the ruling of the Court of Appeals to the contrary, one of the primary issues in this

case involves the proper interpretation of Michigan's Patient Advocate Designation (PAD) Act. MCL 700.5506 et seq. The PAD Act expressly allows an adult person of sound mind when the designation is made (referred to as the "patient") to designate another adult of sound mind (referred to as a "patient advocate") "to exercise powers concerning care, custody, and medical or mental health treatment decisions for the . . ." patient. MCL 700.5506. As stated in the Act, this authority only exists when the patient is unable to participate in such decisions. MCL 700.5508. Specifically, "*the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical treatment or, as applicable, mental health treatment decisions*". MCL 700.5508. However, the statute itself provides the mechanism for making that determination. For medical treatment decisions (rather then mental health treatment decisions), that determination is made as follows:

> The patient's attending physician and another physician or licensed psychologist shall determine upon examination of the patient whether the patient is unable to participate in medical treatment decisions, shall put the determination in writing, shall make the determination part of the patient's medical record, and shall review the determination not less than annually. MCL 700.5508(1).

In this case, the patient advocate designation itself also specifically includes this procedure for "activating" the patient advocate designation:

> I designate Robert Gallagher . . . . as my patient advocate to make care, custody, medical or mental health treatment decisions for me only when I become unable to participate in medical treatment decisions. **The determination of when I am unable to participate in medical and/or mental health treatment decisions shall be made by my attending physician and another physician or licensed psychologist.**
> *See* Exhibit 1 attached to Appellee's Supplemental Brief. [emphasis added]

Therefore, Ms. Roush was not just relying on the statute to provide a way for the

determination to be made, she stated herself the procedure she wanted to be followed. According to the record, Ms. Roush's PAD was "activated" on October 24, 2012 (or possibility on October 23, 2012), using this procedure. Sometime later, apparently beginning around November 1, 2012, Ms. Roush stated a desire to leave the nursing home and return to her personal residence.

However, Michigan's Patient Advocate Designation (PAD) Act provides the mechanism for dealing with disputes regarding the patient's ability to make her own medical care decisions:

> (2) **If a dispute arises** as to whether the patient is unable to participate in medical or mental health treatment decisions, **a petition may be filed with the court in the county in which the patient resides or is located requesting the court's determination as to whether the patient is unable to participate in decisions regarding medical treatment or mental health treatment, as applicable.** If a petition is filed under this subsection, the court shall appoint a guardian ad litem to represent the patient for the purposes of this subsection. The court shall conduct a hearing on a petition under this subsection as soon as possible and not later than 7 days after the court receives the petition. As soon as possible and not later than 7 days after the hearing, the court shall determine whether or not the patient is able to participate in decisions regarding medical treatment or mental health treatment, as applicable. If the court determines that the patient is unable to participate in the decisions, the patient advocate's authority, rights, and responsibilities are effective. If the court determines that the patient is able to participate in the decisions, the patient advocate's authority, rights, and responsibilities are not effective.
> MCL 700.5508(2). [emphasis added]

In other words, MCL 700.5508 provides the mechanism for "*activating*" the patient advocate's authority under the patient advocate designation and in addition provides the mechanism for dealing with a possible dispute over that authority. However, the statute does not specify what constitutes a dispute, nor whether the patient advocate's authority remains activated and continues under the bolded portion, or whether it is automatically suspended when "a dispute arises".

In order for the statutory system outlined in Michigan's Patient Advocate Designation (PAD) Act to be able to work, and for medical care providers to be able to follow directions from

a patient advocate, the procedure outlined in the statute for activating a patient advocate designation, dealing with disputes over the patient's ability to make her own medical health treatment decisions, and so on, must be followed. Once a patient advocate designation has been activated through the statutory procedure, the patient advocate's authority must be recognized as continuing until either another determination is made using the statutory criteria, or a court order is entered (which is the probate court, see below). Otherwise, a medical care provider will never know whether the patient advocate has authority to act.

In the present case, the Appellee is contending that "If a dispute arises as to whether the patient is unable to participate in medical or mental health treatment decisions," it is not the patient's burden to file a petition in probate court for a determination of whether the "patient is unable to participate in medical or mental health treatment decisions" because "a patient advocate's authority 'is exercisable only when the patient is unable to participate in medical or mental health treatment decisions;' MCL 700.5506(3) and automatically suspended when a patient regains those abilities" [quoting from Response to Application for Leave to Appeal at p 10]. However, the Act includes no such statement, and there is nothing automatic about it. There needs to be a medical determination on the patient's record (or a court order), and that determination needs to be communicated to the medical care provider.

In addition to the procedure included under the PAD Act for resolution of disputes regarding a patient's ability to participate in medical treatment decisions, the statute also includes a procedure for dealing with questions regarding the actions of the patient advocate and whether he is acting in the patient's best interests. Under MCL 700.5511(5), if a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests or is not complying with the patient

advocate provisions, a petition may be filed with the probate court in the county in which the patient resides or is located requesting the probate court's determination as to the continuation of the designation or the removal of the patient advocate.

When a PAD has been activated (and not revoked), **the directions by the patient advocate are the equivalent of directions coming from the patient herself**, unless the medial care provider can be shown not to reasonably believe that the patient advocate is acting within the authority of the PAD:

> (2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf. MCL 700.5511(2).

There is nothing in our PAD Act which states that the medical care provider must refuse to follow the directions of the patient advocate (and cannot reasonably rely on the authority of the patient advocate) when relatives of the patient, or even the patient herself, assert that the patient has recovered. Indeed, chaos would reign if that were the rule, because disputes over placement and care decisions are commonplace, and the medical care provider's ability to rely on the authority of the named patient advocate allows the medical care to continue, even when such disputes arise, at least until an appropriate probate court order has been entered.

The use of Michigan's Patient Advocate Designation (PAD) Act is voluntary. No one is required to sign a PAD. However, if you elect to sign a PAD then you have in essence agreed to be bound by the PAD Act's procedure. If the Michigan legislature determines that additional options or protections are needed, then it is the Michigan legislature that will need to formalize and adopt those procedures.

D. There Was Never Any Finding That Ms. Roush Regained the Ability to Participate in Decisions Regarding Her Medical Treatment or Mental Treatment.

As noted above, the authority under a patient advocate designation is exercisable by a patient advocate only when the patient is unable to participate in medical or, as applicable, mental health treatment decisions. MCL 700.5508(1). The Appellee therefore concludes that the patient advocate's authority is "automatically suspended when a patient regains those abilities" [quoting from Appellee's brief]. As stated in the Act:

> (2) A patient advocate designation is suspended when the patient regains the ability to participate in decisions regarding medical treatment or mental health treatment, as applicable. The suspension is effective as long as the patient is able to participate in those decisions. If the patient subsequently is determined under section 5508 or 5515 to be unable to participate in decisions regarding medical treatment or mental health treatment, as applicable, the patient advocate's authority, rights, responsibilities, and limitations are again effective.
> MCL 700.5509(2)

The statute does not specify a method for determining when the patient has regained that ability. Does that mean that when the patient or a family member asserts that the patient can now again participate in medical or mental health treatment decisions, that the patient advocate's authority is immediately suspended? The structure of our statute leads to the conclusion that something more is needed. As noted above, MCL 700.5508(2) provides that if a dispute arises regarding the patient's ability to participate in medical or mental health treatment decisions, a petition can be filed in the probate court (or family division of the circuit court, if applicable). In this case, we have a determination made by two physicians in accordance with the statute that the patient did **not** have that ability on (or about) October 23, 2012. There is no subsequent determination which appears in her medical record until November 15, 2012, and that determination

did **not** reverse the prior determination. If the patient, or one other of the other interested persons who are permitted under the court rule to file a petition under MCL 700.5508(2), believed that Ms. Roush had regained her capacity to participate in her medical or mental health treatment decisions, then that petition should have been filed with the probate court. As far as the Appellant is concerned, it was still required to follow the directions of the named patient advocate. *See* MCL 700.5511(3). This rule is recognized by the PAD Act itself:

> (2) A person providing, performing, withholding, or withdrawing care, custody, or medical or mental health treatment as a result of the decision of an individual who is reasonably believed to be a patient advocate and who is reasonably believed to be acting within the authority granted by the designation is liable in the same manner and to the same extent as if the patient had made the decision on his or her own behalf.
> (3) A person providing care, custody, or medical or mental health treatment to a patient is bound by sound medical or, if applicable, mental health treatment practice and by a patient advocate's instructions if the patient advocate complies with sections 5506 to 5515, but is not bound by the patient advocate's instructions if the patient advocate does not comply with these sections.
>
> MCL 700.5511(2) & (3)

The Appellee refers to the probate court hearing held on November 21, 2012, as evidence that Ms. Roush had regained her ability to participate in her medical or mental health treatment decisions some time earlier. However, the probate court is required to make different factual findings with regard to a Petition for Appointment of Temporary Guardian, (or a Petition for Appointment of Guardian, for that matter), than the question of whether a person has the ability to participate in her medical or mental health treatment decisions. The issue of Ms. Roush's ability to participate in her medical or mental health treatment decisions was never presented to the probate court for a decision, and no decision regarding that issue was made by the probate court, in

connection with the temporary guardian petition hearing held on November 21, 2012, or otherwise. Ms. Roush was allowed to return home, because the probate court denied the Petition for Appointment of Temporary Guardian and there was no guardianship order presently in place. *See* Exhibit 7 attached to Appellee's Supplemental Brief.

Also, as far as the record shows, prior to the hearing on the Petition for Appointment of Temporary Guardian held on November 21, 2012, Ms. Roush did not assert that she had regained the ability to participate in her medical or mental health treatment decisions – rather, she reportedly stated on several occasions that she wanted to go home.

E. Although Ms. Roush's Patient Advocate Designation was Later Revoked, Appellant Could not Follow Her Request to Go Home, Because No One Had Been Properly Appointed to Speak for Her

Under our statute, even if the patient is unable to participate in medical treatment decisions, a patient may revoke a designation at any time and in any manner by which he or she is able to communicate an intent to revoke the designation. This concept is contained in MCL 700.5510 which reads as follows, in pertinent part:

> 700.5510 **Revocation of patient advocate designation.**
> Sec. 5510. (1) A patient advocate designation is revoked by 1 or more of the following:
> (a) The patient's death, except that part of the patient advocate designation, if any, that authorizes the patient advocate to make an anatomical gift of all or part of the deceased patient's body in accordance with this act and part 101 of the public health code, 1978 PA 368, MCL 333.10101 to 333.10123.
> (b) An order of removal by the probate court under section 5511(5).
> (c) The patient advocate's resignation or removal by the court, unless a successor patient advocate has been designated.
> (d) The patient's revocation of the patient advocate designation. Subject to section 5515, even if the patient is unable to participate in medical treatment decisions, a patient may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate

> designation. If there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination on the patient's intent to revoke the patient advocate designation. If the revocation is not in writing, an individual who witnesses a revocation of a patient advocate designation shall describe in writing the circumstances of the revocation, must sign the writing, and shall notify, if possible, the patient advocate of the revocation. If the patient's physician, mental health professional, or health facility has notice of the patient's revocation of a patient advocate designation, the physician, mental health professional, or health facility shall note the revocation in the patient's records and bedside chart and shall notify the patient advocate.
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> * * * * *
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> (2) The revocation of a patient advocate designation under subsection (1) does not revoke or terminate the agency as to the patient advocate or other person who acts in good faith under the patient advocate designation and without actual knowledge of the revocation. Unless the action is otherwise invalid or unenforceable, an action taken without knowledge of the revocation binds the patient and his or her heirs, devisees, and personal representatives. A sworn statement executed by the patient advocate stating that, at the time of doing an act in accordance with the patient advocate designation, he or she did not have actual knowledge of the revocation of the patient advocate designation is, in the absence of fraud, conclusive proof that the patient advocate did not have actual knowledge of the revocation at the time of the act.

Apparently, on November 15, 2012, the Appellee's attorney met with Ms. Roush at the nursing home and after that meeting he informed the nursing home staff that in his opinion Ms. Roush was fully competent to make her own decisions, and that Ms. Roush had revoked the patient advocate designation, and further that Ms. Roush demanded that she be discharged home. At that meeting, Ms. Roush apparently signed a Revocation of Designation of Robert Gallagher as Patient Advocate purporting to revoke the "designation of Robert Gallagher to act for me as my patient advocate", and further designating "my successor patient advocate, Cynthia M. Hardy, who resides at 322 E. Maple Street, Carson City, Michigan, to assume the duties of and act as my patient advocate as provided in the Michigan Designation of Patient Advocate For Health Care form bearing

my signature and dated June 10, 2010." *See* Revocation attached to Appellee's Supplemental Brief as Exhibit 8. This revocation document was reportedly delivered to the nursing home staff by Ms. Roush's attorney.

However, the purported appointment of Cynthia M. Hardy as patient advocate for Ms. Roush was not effective, because (1) the November 15, 2012, document was not signed in the presence of two witnesses as required by the PAD Act, and (2) the June 10, 2010, patient advocate designation document did not name Cynthia M. Hardy as Ms. Roush's patient advocate or successor patient advocate.

Nevertheless, the "revocation" as to Mr. Gallagher could still be effective, even if Ms. Roush still was "unable to participate in medical treatment decisions," because that is not the standard for a valid revocation. Rather, as shown above, the statute provides the following:

> (1) A patient advocate designation is revoked by 1 or more of the following:
> * * * * *
> (d) The patient's revocation of the patient advocate designation. Subject to section 5515, even if the patient is unable to participate in medical treatment decisions, a patient **may revoke a patient advocate designation at any time and in any manner by which he or she is able to communicate an intent to revoke the patient advocate designation**. If there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination on the patient's intent to revoke the patient advocate designation. . . . .
> [emphasis added]
> MCL 700.5510

Therefore, all that is needed is for the patient to have an (actual) intent to revoke the designation, and be able to communicate that intent.

The revocation document at issue here [see Appellee's Supplemental Brief as Exhibit 8] would seem to fulfill that requirement. However, Appellant has expressed doubt as to the validity

of the revocation. As stated in Appellant's Supplemental Brief:

> However, Appellant's staff had reason to question the Ms. Hardy's [sic: Ms. Roush] actual intent to revoke the original appointment given the possibility of undue influence, as well as the invalidity of Ms. Hardy's purported appointment as the successor Patient Advocate because (i) there was a genuine dispute as to whether Ms. Roush had the requisite mental capacity and intent required by MCL § 700.5506(1) to designate a new patient advocate and (ii) the designation did not contain the requisite two witness signatures [as required by MCL § 700.5506(4)].
> Appellant's Supplemental Brief, p 5-6.

These are valid observations, but our statute provides a very low threshold for a revocation of a patient advocate designation: the ability to "communicate an intent to revoke". The revocation document on its face does that.

As shown above, MCL 700.5510(1)(d) provides that if there is a dispute regarding "the intent of the patient to revoke the patient advocate designation" then the probate court (or family court, if applicable) can make a determination. However, as with a petition regarding other matters pertaining to a patient advocate designation, such a petition is to be filed by any "interested person, or by the patient's attending physician"[MCR 5.784(A)], and no jury trial is available. [MCR 5.784(D)(2)]. "Interested persons" for any proceeding concerning a durable power of attorney for health care are:

> (a) the patient,
> (b) the patient's advocate,
> (c) the patient's spouse,
> (d) the patient's adult children,
> (e) the patient's parents if the patient has no adult children,
> (f) if the patient has no spouse, adult children or parents, the patient's minor children, or, if there are none, the presumptive heirs whose addresses are known,
> (g) the patient's guardian and conservator, if any, and
> (h) the patient's guardian ad litem.
>
> MCR 5.125(C)(30)

Therefore, for this case at the time the revocation document was signed, and pursuant to the probate court rules, the only people who could file a court action pertaining to the validity of the purported revocation were Ms. Roush, Mr. Gallagher, Ms. Roush' adult children (not her granddaughter), and Ms. Roush' treating physician. As far as the record discloses, none of these people did that. Instead, on November 15, 2012, the Appellee's attorney filed a petition for Habeas corpus in circuit court, which was denied on November 16, 2012. The Order Denying Writ of Habeas Corpus, dated November 16, 2012, reads in part as follows:

> IT IS HEREBY ORDERED that the Petitioner's Motion for Writ of Habeas Corpus is DENIED for the reason that there are questions of fact as to the Petitioner's competency given the offer of proof by the Laurels of Carson City and the best interests of the petitioner based upon the testimony of Mr. Gallagher. Further there is a Guardianship Petition filed by Mr. Gallagher pending before the Probate Court which is the better forum to address issues of this nature.
>
> This is a final Order and closes this case.
>
> *See* Exhibit D attached to Application for Leave

Although petitions for appointment of a guardian for Ms. Roush were filed by both Mr. Gallagher and also Ms. Roush daughter, Yvonne Olds, it does not appear that any petitions were filed in probate court to determine whether the revocation was valid or whether Ms. Roush was able to participate in decisions regarding [her] medical treatment or mental health treatment. Therefore, as far as Appellant is concerned, on and after November 15, 2012, Ms. Roush had revoked her patient advocate designation, but she was still unable to participate in decisions regarding [her] medical treatment.

Appellee assets that therefore, Appellant should have allowed Ms. Roush to return to her

home, since she said that is what she wanted. However, Ms. Roush' treating doctor's opinion and advice was that she should not go home, because she needed the care she was receiving at the Appellant's medical care facility. In other words, he would not agree to discharge her to her home. State and federal law requires a nursing home to assess the home care that the resident will be discharged into to ensure that the environment is safe and not risk a deterioration of the resident's quality of life. A licensed nursing home is prohibited by state and federal law from discharging a patient without an adequate discharge plan approved by the patient's doctor. See MCL 333.21776, 42 CFR 483.12, 42 USC § 1395i-3(c)(2), 42 USC 1396r(c)(2), and State Operation Manual, Appendix PP - Guidance to Surveyors for Long Term Care Facilities, F284 (Rev. 70, Issued: 01-07-11, Effective: 10-01-10 Implementation: 10-01-10). Therefore, the nursing home could not simply release Ms. Roush to her home contrary to her doctor's orders, particularly when she had been determined unable to participate in decisions regarding [her] medical treatment, and no contrary determination had been made pursuant to the provisions of the PAD Act, or by court order. Also, as noted above, the Petition for Writ of Habeas Corpus was denied and not appealed.

II. THE CIRCUIT COURT DOES NOT HAVE JURISDICTION OVER THE DESIGNATION, ACCEPTANCE, ACTIVATION, AUTHORITY, ACTIONS, SUSPENSION, OR REVOCATION OF A PATIENT ADVOCATE, OR DISPUTES RELATED THERETO.

The standard of review discussed in Section I.A. supra, also applies to this section.

This appeal is from a **circuit court** proceeding dealing with the Appellee's claims which were filed after Ms. Roush's patient advocate had been determined to have authority to act for her and later that designation was revoked by her. Those claims include the following:

1. False imprisonment at Defendant's nursing home from November 8, 2012-November 21, 2012.

2. Intentional infliction of emotional distress (based on the claim that Ms. Roush was illegally detained at the facility from November 8, 2012-November 21, 2012 and that one of the Defendant's physicians refused to treat Ms. Roush after her discharge and that an employee of the Defendant's facility fabricated allegations that resulted in an adult Protective Services investigation).

3. Abuse of process (arising out of the claim that one of the Defendant's employees helped the Plaintiff's patient advocate file a Petition for Guardianship and that an employee of the nursing home fabricated allegations of elder abuse).

4. Claim of civil conspiracy (based on Plaintiff's claim of false imprisonment, intentional infliction of emotional distress, and abuse of process).

As determined by the Court of Appeals, Ms. Roush's ability or lack thereof to participate in medical or mental health treatment decisions is the primary underlying fact in dispute on which the above claims rely, that disputed fact as of October 24, 2012, and later, had not been determined by a court, and therefore that disputed fact remained open for the circuit court to decide, even though that disputed fact had been determined through the procedure provided in Michigan' Patient Advocate Designation Act. As stated in the Court of Appeals Opinion:

> At the time the trial court granted defendant's motion for summary disposition, genuine issues of material fact remained with regard to whether Gallagher was validly appointed as Roush's patient advocate on October 24, 2012, and whether he remained as her patient advocate thereafter. After evaluating Roush's mental status, plaintiff's primary care physician and another physician at the facility determined that Roush was unable to make and communicate medical decisions as of October 24, 2012. However, discovery was not closed at the time of the hearing on defendant's motion for summary disposition, and **plaintiff provided the trial court with an affidavit alleging that if deposed, one of these physicians would testify that Roush actually was able to participate in making medical decisions on October 24, 2012.** Further, at the time of the hearing on the motion for summary disposition plaintiff had not yet had the opportunity to analyze hundreds of pages of written discovery that could have shed light on Roush's mental capabilities on

> October 24, 2012. In sum, the issue whether Roush was unable to make decisions regarding medical treatment on October 24, 2012, was unresolved at the time summary disposition was granted, and this unresolved issue was material to plaintiff's false imprisonment claim.
>
> Court of Appeals Opinion, pp 2-3, *emphasis added*

In addition, the Court of Appeals refused to interpret MCL 700.5508(2), and instead held that the application of that statute to the facts of this case did not resolve those issues. In other words, the Court of Appeals has ruled that a circuit court can ignore the provisions and requirements of Michigan's PAD Act, and make its own determination of "whether the patient is unable to participate in medical treatment decisions," independently from the procedure provided for in Michigan's PAD Act, and months or even years after the patient advocate has acted, as well as after the patient has revoked the PAD in question, and even after the patient's death. Similarly, the Court of Appeals has ruled that the circuit court can also make a later determination about when or whether the patient regained her ability to participate in medical treatment decisions, separate and apart from the provisions and requirements of Michigan's PAD Act.

Michigan's Patient Advocate Designation Act is entirely a creature of statute. Patient Advocate Designations only exist to the extent set forth in the Act. The authority of patient advocate only exists to the extent permitted by the Act. That Act specifically provides the rules for the creation and revocation of a patient advocate designation, and also the procedure to be followed to deal with disputes.

The Patient Advocate Designation Act is part of EPIC and the sections that discuss how disputes pertaining to a patient advocate designation are to be handled refers to filing a petition "with the court . . . ." and the appointment of a guardian ad litem to represent the patient. *See* MCL

700.5508(2); MCL700.5510(1)(d); and MCL 700.5511(5)

EPIC defines the term "court" as follows:

> "Court" means the probate court or, when applicable, the family division of circuit court.
> *See* MCL 700.1103(j)

The PAD Act states that if a dispute arises over "whether the patient is unable to participate in medical or mental health treatment decisions" a petition may be filed "with the court . . . " MCL 700.5508(2). The PAD Act also states that "[I]f there is a dispute as to the intent of the patient to revoke the patient advocate designation, the court may make a determination . . . .". MCL 700.5510(1)(d). And, "If a dispute arises as to whether a patient advocate is acting consistent with the patient's best interests . . . , a petition may be filed with the court . . . ." MCL 700.5511(5). All of these references to "the court" are to the **probate** court (or the family division of circuit court, if applicable to the proceedings, which is not the case here). The probate court rules deal specifically with "Proceedings on a Durable Power of Attorney for Health Care or Mental Health Treatment," and also define who are the persons who can bring such a proceeding. *See* MCR 5.784 and MCR 5.125(C)(30). These types of proceedings are those particularly within the province of the probate court. If the legislature wanted to allow a patient to bring such actions in both the circuit court as well as the probate court, it could easily have said so.

Furthermore, the court rules which apply to these types of proceedings, do not allow a jury trial. MCR 5.784(D)(2). If the Court of Appeals decision is allowed to stand, a plaintiff could avoid this limitation simply by filing her complaint in circuit court rather than the probate court.

The Michigan Constitution states that the jurisdiction, powers, and duties of the probate court shall be provided by law. Mich. Const. 1963, art. 6, § 15. Pursuant to our revised Judicature Act,

MCL 600.841, the probate court has jurisdiction and power as conferred upon it under:

(1) the Estates and Protected Individuals Code; 1998 PA 386, MCL 700.1101 to 700.8206
(2) the Mental Health Code; 1974 PA 258, MCL 330.1001 to 330.2106.
(3) the Revised Judicature Act of 1961; MCL 600.101 to 600.9947 and
(4) any another law or compact.

It is true that Probate courts are courts of limited jurisdiction and derive their jurisdiction and power from statutory authority. *In re Milner's Estate*, 324 Mich 269, 36 NW2d 914 (1949); *In re Haque Estate*, 237 Mich App 295, 602 NW2d 622 (1999).

In the case of the PAD Act, the legislature has given that statutory authority to the probate courts. Although circuit courts have the power to handle any judicial matter for which no special tribunal has been established, the probate court is the "special tribunal" to whom this jurisdiction has been granted by EPIC to deal with questions concerning the patient advocate designation, acceptance, activation, authority, actions, suspension, and revocation, or disputes related thereto, and that is the procedure that must be followed.

Our rules for court interpretation of statutes are well known. The interpretation and application of a statute presents a question of law that the appellate court reviews de novo. *Whitman v City of Burton*, 493 Mich 303, 311; 831 NW2d 223 (2013). The judiciary's objective when interpreting a statute is to discern and give effect to the intent of the Legislature. *Id.* First, the court examines the most reliable evidence of the Legislature's intent, the language of the statute itself. *Id.* "When construing statutory language, [the court] must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined." *In re Receivership of 11910 South Francis Rd.*, 492 Mich 208, 222; 821 NW2d 503 (2012). Effect must be given to every word, phrase, and clause in a statute, and the court must avoid

a construction that would render part of the statute surplusage or nugatory. *Johnson v Recca*, 492 Mich 169, 177; 821 NW2d 520 (2012). "If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted." *Whitman* at 493 "Generally, when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion." *People v Peltola*, 489 Mich 174, 185; 803 NW2d 140 (2011). The courts may not read into the statute a requirement that the Legislature has seen fit to omit. *In re Hurd–Marvin Drain*, 331 Mich 504, 509; 50 NW2d 143 (1951); *Mich Basic Prop Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552, 560; 808 NW2d 456 (2010). "When the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute's purpose." *Mich. Basic Prop. Ins. Ass'n* at 560 (quotation marks and citation omitted). Statutes that address the same subject matter or share a common purpose are in pari materia and must be read collectively as one law, even when there is no reference to one another. *Maple Grove Twp v Misteguay Creek Intercounty Drain Bd.*, 298 Mich App 200, 212; 828 NW2d 459 (2012). Application of the law to the facts presents a question of law subject to review de novo. *Miller–Davis Co v Ahrens Constr, Inc*, 285 Mich App 289, 299; 777 NW2d 437 (2009) rev'd on other grounds 489 Mich 355, 802 NW2d 33 (2011).

Michigan's PAD Act very specifically grants to the probate court the jurisdiction to decide questions that arise regarding a PAD. In the exercise of its jurisdiction, the probate court has the same powers as a circuit court to hear and determine any matter and make any proper order to fully effectuate its jurisdiction and decisions. MCL 600.847. The only mention of a circuit court is in reference to the family division when that court has a proceeding in front of it relating to that family,

and that reference is limited to the family division of the circuit court only. Michigan's PAD Act is a part of EPIC which deals with matters properly to be addressed by a probate court (or when applicable, the family division of the circuit court). The PAD Act does not give the patient, or any other interested person, the ability to dispute the designation, acceptance, activation, authority, actions, suspension, or revocation of a patient advocate in a court other than the probate court (or the family division of circuit court, when applicable).

Reading Michigan's PAD Act as a whole, it must be interpreted as conferring jurisdiction over disputes related to the activation, suspension, termination, etc, of a patient advocate designation on the probate court alone, using only the procedure provided for in the patient advocate designation statute itself.

CONCLUSION

The use of Michigan's Patient Advocate Designation (PAD) Act is voluntary. No one is required to sign a PAD. However, if you elect to sign a PAD then you are bound by the PAD Act's procedure.

Michigan's Patient Advocate Designation Act is entirely a creature of statute. Patient Advocate Designations only exist to the extent set forth in the Act. The authority of patient advocate only exists to the extent permitted by the Act. That Act specifically provides the rules for the creation and revocation of a patient advocate designation, and also the procedure to be followed to deal with disputes, and that is the exclusive procedure for doing so.

Ms. Roush's PAD was "activated" on October 24, 2012 (or possibility on October 23, 2012), using the procedure for doing so as outlined in Michigan's Patient Advocate Designation Act. It was never "unactivated" under the Act's procedure or any notation in her medical records that she had

recovered her ability to participate in her medical treatment decisions, and no probate court order was entered to that effect either.

Therefore, when Ms. Roush' revoked her PAD, and no successor patient advocate or guardian existed for her, the nursing home could not simply release Ms. Roush to her home contrary to her doctor's orders, particularly when she had previously been determined unable to participate in decisions regarding [her] medical treatment, and no contrary determination had been made pursuant to the provisions of the PAD Act, or by court order.

Michigan's PAD Act very specifically grants to the probate court the jurisdiction and authority to decide questions that arise regarding a PAD. In the exercise of its jurisdiction, the probate court has the same powers as a circuit court to hear and determine any matter and make any proper order to fully effectuate its jurisdiction and decisions. Michigan's PAD Act is a part of EPIC which deals with matters properly to be addressed by a probate court (or when applicable, the family division of the circuit court). The PAD Act does not give the patient, or any other interested person, the ability to dispute the designation, acceptance, activation, authority, actions, suspension, or revocation of a patient advocate in a court other than the probate court (or the family division of circuit court, when applicable), or by any procedure other than that which is provided in EPIC.

REQUESTED RELIEF

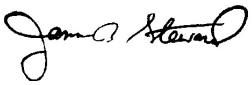
WHEREFORE, *Amicus Curiae* State Bar of Michigan's Elder Law and Disability Rights Section respectfully requests that this Honorable Court to reverse the Court of Appeals finding that Ms. Roush's ability or lack thereof to participate in medical treatment decisions is a fact which can be decided by the circuit court separately from and outside of the procedures provided in EPIC for

the resolution of such disputes, and hold that the determination made in 2012 according to Michigan's PAD Act that Ms. Roush was not able to participate in medical treatment decisions cannot now be litigated in the circuit court.

Alternatively, *Amicus Curiae* State Bar of Michigan's Elder Law and Disability Rights Section respectfully requests that this Honorable Court grant leave to appeal to Appellants.

RESPECTFULLY SUBMITTED,

STEWARD & SHERIDAN, P.L.C.



Dated: December 9, 2015

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